

REMARKS/ARGUMENTS

The Office Action mailed April 14, 2004 has been carefully considered. After such consideration, independent Claims 1, 27, 28, 53 and 54 have been amended to more particularly define the applicant's present invention over the references cited by the Examiner. Specifically, the claims have been amended to clarify that the dynamic programming module generates lowest-cost partial paths for a plurality of time-dependent tasks. The claims have also been amended to clarify that the hashing function having a low probability of collision is useable in conjunction with a height balanced binary search tree that stores the lowest-cost partial paths.

Claims 1-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Syswerda (U.S. Patent No. 5,319,781). Claims 21-26 and 28-54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Syswerda '781 in view of Oba et al. (U.S. Patent No. 5,241,465). Claim 27 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Oba et al. (U.S. Patent No. 5,241,465) in view of Syswerda '781. Reconsideration and allowance is respectfully requested in view of the following arguments.

The Present Invention Is Not Obvious Over The Cited References

The Federal Circuit has ruled on numerous occasions that a holding of "obviousness" requires some motivation, suggestion or teaching within the cited references that would lead one skilled in the art to modify the cited reference or references as claimed by applicant. See, for example, *In re Kotzab*, 217 F.3d 1365, 55 USPQ2d 1313 (Fed. Cir. 2000):

"Most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. See *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference. See *B.F. Goodrich Co. v. Aircraft Breaking Sys. Corp.*, 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996)."

please
do
not
enter
lwd
8/9/04

The Syswerda patent does not disclose, teach or suggest a dynamic programming module that generates lowest-cost partial paths for a plurality of time-dependent tasks and that includes a hashing function having a low probability of collision, wherein the hashing function is useable in conjunction with a height balanced binary search tree that stores the lowest-cost partial paths. Moreover, none of the other cited references including the secondary reference Oba et al. disclose, teach or suggest alone or in combination the above underlined requirements. Any attempt to modify the scheduling systems taught by the cited references to incorporate the above underlined requirements would be contrary to the teachings of the cited references. Therefore, it is respectfully submitted that independent Claims 1, 27, 28, 53 and 54 along with their dependents, as currently amended, are patentable over the cited references.

The Applicant submits that by this amendment he has placed the case in condition for allowance and such action is respectfully requested. However, if any issue remains unresolved, Applicant's attorney would welcome the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,



Edward W. Rilee
Reg. No. 31,869
MacCord Mason PLLC
Post Office Box 2974
Greensboro, NC 27402
(336) 273-4422

Date: July 13, 2004
File No.: 4675-008

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL, IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, ON JULY 13, 2004

Donna Cottelli

Name of Depositor



Signature

7-13-04

Date of Signature